



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Toronto ON M5H 3S8

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**IN THE MATTER OF
ELECTROVAYA INC. and SANKAR DAS GUPTA**

AMENDED AND RESTATED SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. This matter concerns unbalanced news releases issued by Electrovaya Inc. (“Electrovaya” or the “Company”) and its failure to update previously-announced forward-looking information.
2. The Ontario Securities Commission (the “Commission”) has issued a Notice of Hearing (the “Notice of Hearing”) to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the “Act”), it is in the public interest for the Commission to make certain orders against Electrovaya and Dr. Sankar Das Gupta, the President and Chief Executive Officer of the Company and Chair of its board of directors (the “Board”), (“Das Gupta” and, together with Electrovaya, the “Respondents”), in respect of the conduct described herein.

PART II - JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission (“Staff”) recommend settlement of the proceeding (the “Proceeding”) against the Respondents commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this Settlement Agreement. The Respondents consent to the making of an order (the “Order”) in the form attached as Schedule “A” based on the facts set out below.
4. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondents agree with the facts as set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

PART III - AGREED FACTS

A. BACKGROUND

5. Das Gupta is the Chair of the Board, President and Chief Executive Officer of ElectroVaya. He also serves on its Disclosure Committee.

6. ElectroVaya designs, develops and manufactures energy storage systems for the automotive, utility and commercial sector, primarily focusing on lithium ion battery systems. It is a reporting issuer in Ontario, and its common shares (the “Shares”) are listed on the Toronto Stock Exchange (the “TSX”) under the trading symbol “EFL”. The Shares also trade on the OTCQX Best Market under the trading symbol “EFLVF”. ElectroVaya also has outstanding stock options and warrants.

B. OVERVIEW

7. The conduct at issue relates to news releases issued by ElectroVaya, which contained unbalanced presentations of information, and the failure to disclose developments affecting previously-announced forward-looking information.

8. As a reporting issuer, ElectroVaya is subject to continuous disclosure obligations under Ontario securities law. To assist reporting issuers in complying with their obligations, the Canadian Securities Administrators, including the Commission, have issued National Policy 51-201 *Disclosure Standards* (“NP 51-201”). It provides guidance that, among other things, emphasizes the importance of announcements being factual and balanced, without exaggerated reports or promotional commentary.

9. Disclosure of forward-looking information is subject to the provisions of National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”). Specifically, Part 4A requires, among other things, that the disclosure include the factors or assumptions used to develop the forward-looking information and risk factors that could cause actual results to differ from it. Furthermore, section 5.8 requires the reporting issuer to include in its Management’s Discussion & Analysis (“MD&A”) (unless otherwise previously disclosed in a press release by the reporting issuer) disclosure of any events or circumstances that are reasonably likely to cause actual results to differ from the forward-looking information.

10. Requirements for timely, accurate and efficient disclosure of information are a primary means for achieving the purposes of the Act.

11. Between May and September 2016, Electrovaya issued five news releases that announced significant new business relationships in unbalanced terms. Electrovaya also did not disclose in its MD&A that revenue estimates announced in two previously announced commercial arrangements would not be realized.

12. In 2015, Staff identified and discussed similar issues with Electrovaya, including five unbalanced news releases, which the Company had not updated. To address these issues, Electrovaya provided additional balancing disclosure and business updates in its MD&A for the year ended September 30, 2014 (the “2014 MD&A”). However, it did not reflect that information in its annual information form (the “AIF”) for the year ended September 30, 2015 (the “2015 AIF”).

13. This Settlement Agreement concerns Electrovaya’s disclosure during the period commencing in December 2015 and ending in September 2016 (the “Material Time”). During the Material Time, Electrovaya issued five unbalanced news releases, contrary to the public interest. Contrary to Ontario securities law, Electrovaya failed to: (a) update announced forward-looking information in its MD&A; and (b) provide an accurate description of its business in its AIF. By authorizing, permitting or acquiescing in Electrovaya’s non-compliance, Das Gupta, as a director and officer of Electrovaya, is deemed to have also failed to comply with Ontario securities law.

C. DETAILED FACTS

2015 Review

14. In 2015, Staff conducted a continuous disclosure review of Electrovaya (the “2015 Review”) that revealed the issuance of unbalanced press releases. This included five specific press releases issued on or prior to November 2014, each of which made significant positive announcements, such as the announcement of a new contract or revenue opportunity. In most of these cases, the amount of revenue that the arrangement was expected to generate was not quantified in the announcement, but significant revenue potential was implied by the nature of the announced opportunity. None of these press releases contained an adequate discussion of risks, contingencies or barriers to crystalizing the arrangements, and some of the press releases

did not discuss the revenue opportunity in sufficient detail in order for investors to be able to understand the nature of the opportunity and therefore the probability of realization. In some cases, the initiatives represented non-binding letters of intent, rather than non-cancellable contracts, which made the initial announcements incomplete in the absence of other disclosure outlining the risks, contingencies and barriers involved in realizing these amounts.

15. When events occurred which made it likely that the contracts and revenue opportunities originally announced in the five aforementioned press releases would not transpire (such as the potential customer's decision not to proceed with the arrangement) the Company failed to provide adequate disclosure in this regard. Following the review by Staff, ElectroVaya provided additional business updates and balancing disclosure in its 2014 MD&A.

2016 Review

16. In 2016, in connection with a prospectus review, Staff reviewed ElectroVaya's recent continuous disclosure (the "2016 Review"). The 2016 Review revealed that:

- (i) Subsequent to the 2015 Review, the Company continued to issue unbalanced press releases. Between May and September 2016 the Company issued five press releases, announcing significant new positive business relationships. In most cases, the amount of revenue which the Company expected to earn from these relationships was quantified and such amounts represented many multiples of the Company's historical annual revenues. None of the press releases contained balanced disclosure discussing the nature of the arrangements, which were often non-binding, including disclosure about any related risks, contingencies and barriers.
- (ii) While some information contained in these five press releases represented forward looking information in the form of quantified anticipated future revenue amounts for specific customer arrangements, the Company did not provide material factors and assumptions underlying the forward looking statements.
- (iii) The Company did not update forward looking information in its ongoing MD&A, in respect of two other customer arrangements, where anticipated revenue amounts had been previously disclosed and when events subsequent to their original announcement made it clear that these revenue estimates would not transpire.

(iv) As noted above, in response to the 2015 Review, the Company provided certain clarifying disclosure in the form of additional business updates in its 2014 MD&A. During the 2016 Review, Staff noted that these updates had not been carried forward to its 2015 AIF. As a result, the 2015 AIF provided overly optimistic information about the future potential of certain revenue arrangements.

17. As a result of the 2016 Review, Electrovaya issued two clarifying press releases. The first clarifying press release did not address all of the deficiencies identified by Staff. Electrovaya also filed an amended and restated 2015 AIF.

18. Das Gupta authorized, permitted or acquiesced in the conduct of Electrovaya described above.

D. MITIGATING FACTORS

19. Das Gupta did not sell any common shares of Electrovaya during the Material Time.

20. In connection with the 2016 Review:

- (a) Electrovaya filed an amended and restated 2015 AIF;
- (b) Electrovaya revised its disclosure policy, including introducing external counsel review of all continuous disclosure;
- (c) the Respondents have represented to Staff that Electrovaya has arranged for external counsel to provide a seminar to its Disclosure Committee on its revised disclosure policy and disclosure obligations and standards generally;
- (d) the Respondents have represented to Staff that Das Gupta attended, via webinar, the OSC SME Institute seminar on Continuous Disclosure in December 2016;
- (e) the Respondents have represented to Staff that Electrovaya has hired an investor relations consultant with TSX-listed issuer experience; and
- (f) the Respondents have represented to Staff that an independent director has been appointed to Electrovaya's Disclosure Committee.

**PART IV - BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT
CONTRARY TO THE PUBLIC INTEREST**

21. The Respondents acknowledge and admit that, during the Material Time:
- (a) Electrovaya issued unbalanced news releases, contrary to the public interest;
 - (b) Electrovaya failed to update forward-looking information in its Q1 and Q3 2016 MD&A, contrary to section 5.8 of NI 51-102;
 - (c) Electrovaya failed to provide an accurate description of the development of its business in its 2015 AIF, contrary to Item 4 of 51-102F2 *Annual Information Form*;
 - (d) Das Gupta, a director and officer of Electrovaya, authorized, permitted or acquiesced in Electrovaya's non-compliance with Ontario securities law, as set out in subparagraphs (b) and (c), above, and is deemed not to have complied with Ontario securities law under section 129.2 of the Act; and
 - (e) as set out in subparagraphs (a) through (d), above, the Respondents engaged in conduct contrary to the public interest.

PART V - TERMS OF SETTLEMENT

22. The Respondents agree to the terms of settlement set forth below.
23. The Respondents consent to the Order, pursuant to which it is ordered that:
- (a) this Settlement Agreement be approved;
 - (b) Electrovaya submit to a review by Hansell LLP (the "Consultant") of: (i) Electrovaya's corporate governance framework, including the position and role of the Chair of the Board and the composition of its Disclosure Committee; (ii) Electrovaya's disclosure policies; and (iii) the policies, processes, reports and systems related to Electrovaya's disclosure controls and procedures; and institute such changes as may be recommended by the Consultant and accepted by Staff in accordance with the process set forth in Schedule "B" to this Settlement Agreement, pursuant to paragraph 4 of subsection 127(1) of the Act;

- (c) Das Gupta be reprimanded pursuant to paragraph 6 of subsection 127(1) of the Act;
- (d) Das Gupta be prohibited from becoming or acting as a director or officer of any reporting issuer, other than Electrovaya or an affiliate, for a period of one year commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act; and
- (e) Das Gupta exclusively pay an administrative penalty in the amount of \$250,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act.

24. The amount set out in subparagraph 23(e) shall be paid by certified cheque prior to the issuance of the Order.

25. The Respondents have given an undertaking (the “Undertaking”) to the Commission in the form attached as Schedule “C” to this Settlement Agreement, under which:

- (a) Electrovaya undertakes to, and Das Gupta undertakes to cause Electrovaya to, institute a requirement that the Board have an independent director as Chair for a period of 20 months commencing from the date of the Order;
- (b) Electrovaya undertakes to, and Das Gupta undertakes to cause Electrovaya to, institute the following requirements with respect to Electrovaya’s Disclosure Committee, which requirements shall be effective for a period of 20 months commencing from the date of the Order:
 - (i) the Disclosure Committee shall be composed of four members, at least two of whom shall be independent directors of Electrovaya;
 - (ii) one of the independent members shall be the Chair;
 - (iii) all public disclosure made by Electrovaya shall be approved by the Disclosure Committee by majority vote;

- (iv) where there is an equality of votes, the Chair shall cast a second or casting vote; and
 - (v) notwithstanding clause (iii) above, where immediate disclosure is required and one of the independent members cannot reasonably be reached, the other three members may vote on the disclosure proposed to be made by ElectroVaya, which shall be approved only if the remaining independent member votes in favour of it;
- (c) Das Gupta undertakes to exclusively pay the costs of Consultant's review, which (without limiting Das Gupta's liability to pay the entirety of the costs) are estimated to be between \$85,000 and \$100,000;
- (d) Das Gupta undertakes to participate in, and exclusively pay for, a corporate governance course on disclosure issues acceptable to Staff, the costs of which (without limiting Das Gupta's liability to pay the entirety of the costs) are estimated to be \$2,500; and
- (e) ElectroVaya undertakes to, and Das Gupta undertakes to cause ElectroVaya to, disseminate and file a news release acceptable to Staff regarding this Settlement Agreement.

26. Das Gupta consents to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in subparagraph 23(d). These sanctions may be modified to reflect the provisions of the relevant provincial or territorial securities law. The Respondents acknowledge that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of certain Canadian jurisdictions allow orders made in this matter to take effect in them automatically, without further notice to the Respondents. The Respondents should contact the securities regulator of any other jurisdiction in which the Respondents intend to engage in any securities-related activities, prior to undertaking such activities.

PART VI - STAFF AND COMMISSION

27. If the Commission approves this Settlement Agreement, Staff will not commence any other proceeding under Ontario securities law against the Respondents in relation to the facts set

out in Part III of this Settlement Agreement, unless the Respondents fail to comply with any term in this Settlement Agreement or the Undertaking, in which case Staff may bring proceedings under Ontario securities law against the Respondents that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement or the Undertaking.

28. The Respondents waive any defences to proceedings referenced in paragraph 27 that are based on the limitations period in the Act.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

29. The parties will seek approval of this Settlement Agreement at a public hearing (the “Settlement Hearing”) before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission’s *Rules of Procedure* (2014), 37 O.S.C.B. 4168.

30. Das Gupta will attend the Settlement Hearing in person.

31. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

32. If the Commission approves this Settlement Agreement:

- (a) the Respondents waive all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) none of the parties will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

33. Whether or not the Commission approves this Settlement Agreement, the Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission’s jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT

34. If the Commission does not make the Order:
- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the Settlement Hearing will be without prejudice to Staff and the Respondents; and
 - (b) Staff and the Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.
35. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

36. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.
37. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

[The remainder of this page is intentionally left blank.]

DATED at _____, Ontario as of the 29th day of June, 2017.

Witness: _____

SANKAR DAS GUPTA

ELECTROVAYA INC.

By: _____
Sankar Das Gupta
President and Chief Executive Officer

DATED at Toronto, Ontario as of the 29th day of June, 2017.

ONTARIO SECURITIES COMMISSION

By: _____
Jeff Kehoe
Director, Enforcement Branch

SCHEDULE "A"

FORM OF ORDER



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

IN THE MATTER OF ELECTROVAYA INC. AND SANKAR DAS GUPTA

- , Chair of the Panel
- , Commissioner
- , Commissioner

[date]

ORDER (Subsection 127(1) of the *Securities Act, R.S.O. 1990, c. S.5*)

THIS APPLICATION, made jointly by Staff of the Commission and Electrovaya Inc. (“Electrovaya”) and Dr. Sankar Das Gupta (“Das Gupta” and, together with Electrovaya, the “Respondents”) for approval of a settlement agreement dated as of [date] (the “Settlement Agreement”), was heard on [date] at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON READING the Statement of Allegations dated [date], the Settlement Agreement, an undertaking of the Respondents dated as of [date] attached as Annex I to this Order and the terms of consultant review attached as Annex II to this Order, and on hearing the submissions of the representatives of the Respondents and Staff;

IT IS ORDERED THAT:

1. the Settlement Agreement be approved;

2. Electrosvaya submit to a review by Hansell LLP (the “Consultant”) of: (a) Electrosvaya’s corporate governance framework, including the position and role of the Chair of the Board and the composition of its Disclosure Committee; (b) Electrosvaya’s disclosure policies; and (c) the policies, processes, reports and systems related to Electrosvaya’s disclosure controls and procedures; and institute such changes as may be recommended by the Consultant and accepted by Staff in accordance with the process set forth in Annex II to this Order, pursuant to paragraph 4 of subsection 127(1) of the Act;

3. Das Gupta be reprimanded pursuant to paragraph 6 of subsection 127(1) of the Act;

4. Das Gupta be prohibited from becoming or acting as a director or officer of any reporting issuer, other than Electrosvaya or an affiliate, for a period of one year commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act; and

5. Das Gupta exclusively pay an administrative penalty in the amount of \$250,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act.



ANNEX I

UNDERTAKING

IN THE MATTER OF ELECTROVAYA INC. and SANKAR DAS GUPTA

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated as of June 29, 2017 between Electrovaya Inc. and Dr. Sankar Das Gupta and Staff of the Commission (the “Settlement Agreement”). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.
2. Electrovaya undertakes to, and Das Gupta undertakes to cause Electrovaya to, institute a requirement that the Board have an independent director as Chair for a period of 20 months commencing from the date of the Order.
3. Electrovaya undertakes to, and Das Gupta undertakes to cause Electrovaya to, institute the following requirements with respect to Electrovaya’s Disclosure Committee, which requirements shall be effective for a period of 20 months commencing from the date of the Order:
 - (a) the Disclosure Committee shall be composed of four members, at least two of whom shall be independent directors of Electrovaya;
 - (b) one of the independent members shall be the Chair;
 - (c) all public disclosure made by Electrovaya shall be approved by the Disclosure Committee by majority vote;
 - (d) where there is an equality of votes, the Chair shall cast a second or casting vote;
and

(e) notwithstanding subparagraph (c) above, where immediate disclosure is required and one of the independent members cannot reasonably be reached, the other three members may vote on the disclosure proposed to be made by Electrovaya, which shall be approved only if the remaining independent member votes in favour of it.

4. Das Gupta undertakes to exclusively pay the costs of Consultant's review, which (without limiting Das Gupta's liability to pay the entirety of the costs) are estimated to be between \$85,000 and \$100,000.

5. Das Gupta undertakes to participate in, and exclusively pay for, a corporate governance course on disclosure issues acceptable to Staff, the costs of which (without limiting Das Gupta's liability to pay the entirety of the costs) are estimated to be \$2,500.

6. For greater certainty, Das Gupta undertakes to pay all of the amounts payable by him under the Settlement Agreement, the Order and this Undertaking from his personal assets, without recourse to any insurance, indemnification or similar provision.

7. Electrovaya undertakes to, and Das Gupta undertakes to cause Electrovaya to, disseminate and file a news release acceptable to Staff regarding the Settlement Agreement.

DATED at [city], [province] as of the [date] day of [date].

Witness: ●

SANKAR DAS GUPTA

ELECTROVAYA INC.

By: _____

Sankar Das Gupta
President and Chief Executive Officer

ANNEX II

CONSULTANT'S REVIEW

All terms shall have the same meanings herein as in the settlement agreement dated as of June 29, 2017 between Electrovaya Inc. and Dr. Sankar Das Gupta and Staff of the Commission.

A. Consultant's Mandate

1. To conduct a review of, and to deliver reports addressing: (a) Electrovaya's corporate governance framework, including the position and role of the Chair of the Board and the composition of its Disclosure Committee; (b) Electrovaya's disclosure policies; and (c) the policies, processes, reports and systems related to Electrovaya's disclosure controls and procedures.

B. Consultant's Obligations

2. The Consultant shall issue a report to Electrovaya's Board, Audit Committee and Disclosure Committee and Staff within three months of the date of the Order, provided that the Consultant may seek to extend the review period for one additional three-month term by requesting an extension from Staff. Staff, after consultation with Electrovaya, may grant the extension if Staff deems it reasonable and warranted.

3. The Consultant's report shall address the Consultant's review of the areas specified in Part A hereof and shall include a description of the review performed, the conclusions reached, the Consultant's recommendations for any changes or improvements as the Consultant reasonably deems necessary to conform to the law and best practices and a procedure for implementing the recommended changes or improvements.

4. Electrovaya shall adopt all recommendations contained in the Consultant's report, provided that within 30 days of receipt of the report, it may in writing advise the Consultant and Staff of any recommendation it considers unnecessary or inappropriate. Electrovaya need not adopt that recommendation but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

5. Electrovia and the Consultant shall attempt in good faith to reach an agreement on the recommendations Electrovia has notified the Consultant of its disagreement with in accordance with paragraph 4. In the event Electrovia and the Consultant are unable to agree on an alternative proposal within 60 days of the issuance of the Consultant's report, Electrovia shall abide by the Consultant's determination.

6. Electrovia shall retain the Consultant for a period of twelve months from the date of the Order. After the Consultant's recommendations become final pursuant to paragraph 4 or 5 above, the Consultant shall oversee the implementation of the recommendations.

7. Twelve months after the date of the Order, the Consultant shall provide a report to Electrovia's Board, Audit Committee and Disclosure Committee and Staff concerning the progress of the implementation. If not all of the Consultant's recommendations have been implemented in a manner satisfactory to Staff for at least two successive fiscal quarters, Electrovia shall extend the Consultant's term of appointment until such time as all recommendations have been implemented in a manner satisfactory to Staff for at least two successive fiscal quarters.

8. At the conclusion of the 12-month period specified in paragraph 6 (or the extended period contemplated in paragraph 7), in addition to any requirements under applicable securities laws requiring disclosure related to this matter, Electrovia shall disclose in each of its next interim MD&A and next annual MD&A a summary of:

- (a) the Consultant's report specified in paragraph 3;
- (b) if Electrovia disagreed with any recommendations in the Consultant's report, the nature of the disagreement and its resolution, including the policy, procedure or system that was implemented; and
- (c) the implementation of the balance of the Consultant's recommendations.

9. In addition to the reports identified above, the Consultant shall provide Electrovia's Board, Audit Committee and Disclosure Committee and Staff with such documents or other information concerning the areas specified in Part A as any of them may request during the pendency or at the conclusion of the review.

C. Terms of Consultant's Retainer

10. The Consultant shall have reasonable access to all of Electrovaya's books and records and may meet privately with its personnel. Electrovaya shall instruct and otherwise encourage its directors, officers and employees to cooperate fully with the Consultant and inform its directors, officers and employees that failure to do so may be grounds for disciplinary action, dismissal or other appropriate actions.

11. The Consultant shall have the right, as reasonable and necessary in its judgment, to retain lawyers, accountants or other persons or firms, other than directors, officers or employees of Electrovaya, to assist in the discharge of its obligations. The reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant shall be borne exclusively by Das Gupta.

12. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of its responsibilities, and require all persons and firms retained to assist the Consultant to do so as well. The Consultant shall provide Staff with such notes and documents as Staff may request during the pendency or at the conclusion of the review.

SCHEDULE “B”

CONSULTANT’S REVIEW

All terms shall have the same meanings herein as in the settlement agreement dated as of June 29, 2017 between Electrovaya Inc. and Dr. Sankar Das Gupta and Staff of the Commission.

A. Consultant’s Mandate

1. To conduct a review of, and to deliver reports addressing: (a) Electrovaya’s corporate governance framework, including the position and role of the Chair of the Board and the composition of its Disclosure Committee; (b) Electrovaya’s disclosure policies; and (c) the policies, processes, reports and systems related to Electrovaya’s disclosure controls and procedures.

B. Consultant’s Obligations

2. The Consultant shall issue a report to Electrovaya’s Board, Audit Committee and Disclosure Committee and Staff within three months of the date of the Order, provided that the Consultant may seek to extend the review period for one additional three-month term by requesting an extension from Staff. Staff, after consultation with Electrovaya, may grant the extension if Staff deems it reasonable and warranted.

3. The Consultant’s report shall address the Consultant’s review of the areas specified in Part A hereof and shall include a description of the review performed, the conclusions reached, the Consultant’s recommendations for any changes or improvements as the Consultant reasonably deems necessary to conform to the law and best practices and a procedure for implementing the recommended changes or improvements.

4. Electrovaya shall adopt all recommendations contained in the Consultant’s report, provided that within 30 days of receipt of the report, it may in writing advise the Consultant and Staff of any recommendation it considers unnecessary or inappropriate. Electrovaya need not adopt that recommendation but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

5. Electrovia and the Consultant shall attempt in good faith to reach an agreement on the recommendations Electrovia has notified the Consultant of its disagreement with in accordance with paragraph 4. In the event Electrovia and the Consultant are unable to agree on an alternative proposal within 60 days of the issuance of the Consultant's report, Electrovia shall abide by the Consultant's determination.

6. Electrovia shall retain the Consultant for a period of twelve months from the date of the Order. After the Consultant's recommendations become final pursuant to paragraph 4 or 5 above, the Consultant shall oversee the implementation of the recommendations.

7. Twelve months after the date of the Order, the Consultant shall provide a report to Electrovia's Board, Audit Committee and Disclosure Committee and Staff concerning the progress of the implementation. If not all of the Consultant's recommendations have been implemented in a manner satisfactory to Staff for at least two successive fiscal quarters, Electrovia shall extend the Consultant's term of appointment until such time as all recommendations have been implemented in a manner satisfactory to Staff for at least two successive fiscal quarters.

8. At the conclusion of the 12-month period specified in paragraph 6 (or the extended period contemplated in paragraph 7), in addition to any requirements under applicable securities laws requiring disclosure related to this matter, Electrovia shall disclose in each of its next interim MD&A and next annual MD&A a summary of:

- (a) the Consultant's report specified in paragraph 3;
- (b) if Electrovia disagreed with any recommendations in the Consultant's report, the nature of the disagreement and its resolution, including the policy, procedure or system that was implemented; and
- (c) the implementation of the balance of the Consultant's recommendations.

9. In addition to the reports identified above, the Consultant shall provide Electrovia's Board, Audit Committee and Disclosure Committee and Staff with such documents or other information concerning the areas specified in Part A as any of them may request during the pendency or at the conclusion of the review.

C. Terms of Consultant's Retainer

10. The Consultant shall have reasonable access to all of Electrovaya's books and records and may meet privately with its personnel. Electrovaya shall instruct and otherwise encourage its directors, officers and employees to cooperate fully with the Consultant and inform its directors, officers and employees that failure to do so may be grounds for disciplinary action, dismissal or other appropriate actions.

11. The Consultant shall have the right, as reasonable and necessary in its judgment, to retain lawyers, accountants or other persons or firms, other than directors, officers or employees of Electrovaya, to assist in the discharge of its obligations. The reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant shall be borne exclusively by Das Gupta.

12. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of its responsibilities, and require all persons and firms retained to assist the Consultant to do so as well. The Consultant shall provide Staff with such notes and documents as Staff may request during the pendency or at the conclusion of the review.

SCHEDULE “C”

FORM OF UNDERTAKING

**IN THE MATTER OF
ELECTROVAYA INC. and SANKAR DAS GUPTA**

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated as of June 29, 2017 between Electrovaya Inc. and Dr. Sankar Das Gupta and Staff of the Commission (the “Settlement Agreement”). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.
2. Electrovaya undertakes to, and Das Gupta undertakes to cause Electrovaya to, institute a requirement that the Board have an independent director as Chair for a period of 20 months commencing from the date of the Order.
3. Electrovaya undertakes to, and Das Gupta undertakes to cause Electrovaya to, institute the following requirements with respect to Electrovaya’s Disclosure Committee, which requirements shall be effective for a period of 20 months commencing from the date of the Order:
 - (a) the Disclosure Committee shall be composed of four members, at least two of whom shall be independent directors of Electrovaya;
 - (b) one of the independent members shall be the Chair;
 - (c) all public disclosure made by Electrovaya shall be approved by the Disclosure Committee by majority vote;
 - (d) where there is an equality of votes, the Chair shall cast a second or casting vote;
and

(e) notwithstanding subparagraph (c) above, where immediate disclosure is required and one of the independent members cannot reasonably be reached, the other three members may vote on the disclosure proposed to be made by Electrovaya, which shall be approved only if the remaining independent member votes in favour of it.

4. Das Gupta undertakes to exclusively pay the costs of Consultant's review, which (without limiting Das Gupta's liability to pay the entirety of the costs) are estimated to be between \$85,000 and \$100,000.

5. Das Gupta undertakes to participate in, and exclusively pay for, a corporate governance course on disclosure issues acceptable to Staff, the costs of which (without limiting Das Gupta's liability to pay the entirety of the costs) are estimated to be \$2,500.

6. For greater certainty, Das Gupta undertakes to pay all of the amounts payable by him under the Settlement Agreement, the Order and this Undertaking from his personal assets, without recourse to any insurance, indemnification or similar provision.

7. Electrovaya undertakes to, and Das Gupta undertakes to cause Electrovaya to, disseminate and file a news release acceptable to Staff regarding the Settlement Agreement.

DATED at [city], [province] as of the [date] day of [date].

Witness: ●

SANKAR DAS GUPTA

ELECTROVAYA INC.

By: _____
Sankar Das Gupta
President and Chief Executive Officer